

AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ of _____, 2021 between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City) acting through its BOARD OF PARKS AND RECREATION COMMISSIONERS OF KANSAS CITY, MISSOURI (Parks Board), and FRIENDS OF THE ZOO, INC. OF KANSAS CITY, MISSOURI, a not-for-profit corporation organized and existing under the laws of the State of Missouri (FOTZ) whereby the parties desire to continue the relationship established by the original Agreement dated December 28, 2001, as amended and restated, as agreed by the parties:

WITNESSETH:

WHEREAS, the City owns, and operates through the Parks Board, the Kansas City Zoological Park “Zoo” located in Swope Park in Kansas City, Missouri; and

WHEREAS, regional support of the Zoo has been further established by some residents of the Missouri portion of the Kansas City metropolitan area through the establishment of the Kansas City Zoological District pursuant to sections 184.500 through 184.512 of the Revised Statutes of Missouri; and

WHEREAS, the City and the Parks Board have determined that it is in the public interest to continue private management and operation of the Zoo through a private not-for-profit organization with relevant experience and capabilities; and

WHEREAS, FOTZ has been dedicated since its founding in 1959 to the support and improvement of the Zoo and currently operates significant facilities at the Zoo; and

WHEREAS, on December 28, 2001 the City, the Parks Board, and FOTZ entered into an Agreement, as amended and restated on April 26, 2007, on January 1, 2012, and on January 1, 2017 (collectively, as amended and restated, the “Original Agreement”) which in part provided that FOTZ would manage and operate the Zoo on behalf of the Parks Board and City; and

WHEREAS, the City and FOTZ agree that it is in the best interests of the public and the Zoo that the City continue to contract with FOTZ for the management and operation of the Zoo and its associated programs and activities and wish to continue that relationship through this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

ARTICLE I APPOINTMENT AND FOTZ OBLIGATIONS

Section 1.1 *Appointment.* On the terms and conditions set forth in this Agreement, the City hereby reappoints FOTZ as exclusive manager and operator of the Zoo, effective immediately upon execution by the parties (the “Effective Date”), which is, without any lapse, immediately following the expiration of the Original Agreement.

Section 1.2 *Relationship.* FOTZ is, and in its performances under this Agreement shall remain, an independent contractor and as such shall have full responsibility and authority to discharge the duties imposed upon it hereunder. Neither FOTZ nor the City shall have the right or authority to bind the other party, without the express written authorization of such other party, to any obligation to any third party. Nothing contained in this Agreement shall constitute the parties as partners or joint venturers for any purpose, it being the express intention of the parties that no such partnership or joint venture shall exist and that the parties shall have only such duties and responsibilities to one another with respect to the matters described herein as are expressly set forth in this Agreement, except as otherwise agreed to by the parties.

Section 1.3 *Liabilities.* FOTZ shall not assume or otherwise be responsible hereunder for any liabilities, obligations or commitments; whether known or unknown, contingent or existing, of City, the Parks Board, or their agents, except those liabilities expressly identified.

Section 1.4 *Operating Duties.* In connection with discharging its responsibilities under this Agreement, FOTZ shall:

(a) maintain the Zoo as a permanent and general collection of animals which remains accredited by the American Zoo and Aquarium Association or its successor and use reasonable best efforts to exceed those standards and improve the cleanliness, safety and attractiveness of the Zoo;

(b) operate the Zoo in a manner consistent with the objective of promoting the excellence of the Zoo and its facilities and in compliance with standards of the U.S. Department of Agriculture and all applicable laws and regulations of governmental bodies or private standard setting organizations having jurisdiction over the Zoo, including securing, maintaining, renewing and complying with the requirements of all permits and licenses which may be required from time to time while this Agreement is in force for the management of the Zoo and the ownership or custodianship of the animals located therein or in transit therefrom or thereto;

(c) be responsible for all expenses for salaries, supplies, utilities and other items required for the operation of the zoo in accordance with this Agreement, including expenditures to acquire, care for and replace animals and to maintain the Zoo (“Operating Expenses”), but not for “Capital Improvements” (defined as buildings, fixtures and improvements), except as expressly provided in this Agreement and those FOTZ, in its discretion, elects to make;

(d) be responsible for paying for stormwater and sewage services to the City for the operation of the zoo;

(e) observe all general requirements not inconsistent with the terms of this Agreement which are promulgated and enforced from time to time by the Parks Board;

(f) provide to the residents of Jackson and Clay counties constituting the Kansas City Zoological District, so long as those counties are members of the District and including any additional member counties that may join in, appropriate discounts on

admission and memberships, as well as certain free days and school programs, including field trips and a dedicated “Zoomobile” program, all as described by FOTZ;

(g) operate the Zoo on a basis which will not discriminate against any person, including without limitation, any employee or applicant for employment, because of race, religion, color, ancestry, national origin, sex, sexual orientation, marital status, handicap, or familial status, in a manner prohibited by law, regulation or ordinance, and comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101336 and the regulations promulgated thereunder;

(h) apply all revenues over which this Agreement gives FOTZ control (exclusively to the promotion, operation, improvement and maintenance of the Zoo) and be responsible for the payment of all taxes, fees and other costs associated therewith, except for any that may be associated with the ownership of land or structures;

(i) conduct regular surveys, including customer satisfaction surveys, and report to the Parks Board the results and any responsive actions of those surveys within thirty (30) days after presentation to the FOTZ Board;

(j) set fees and charges provided that the Parks Board and FOTZ intend that the Zoo remain accessible to individuals from all economic circumstances;

(k) make or assist in presentations to the City Council or a committee thereof as reasonably required by the Parks Board or Council;

(l) prepare a Strategic Plan for the Zoo at least every five years and submit the Plan and any amendments that materially change the Plan to the Parks Board;

(m) deposit all public revenue received from its operation of the Zoo in a bank which has a depository located in Kansas City, Missouri. For purposes hereof, United Missouri Bank is deemed an acceptable bank and for any change the bank must be on a list accepted by the Director of Finance;

(n) use its reasonable best efforts to actively solicit private support for the Zoo through membership fees and charitable contributions and actively solicit federal, state or local grants or other funds to support the operation and purposes of the Zoo;

(o) comply with all applicable Federal, State, and City laws;

(p) the City or Parks Department may, in their respective discretion, perform an annual physical inventory of all assets with an original cost of \$5,000.00 (Five thousand dollars) or more and provide the list of assets to the City as of the end of the City’s fiscal year of each year in a format acceptable to the City. FOTZ will in all circumstances cooperate with the City and/or Parks Department in their performance of any such inventory. The list of assets will include, but is not limited to, structures, vehicles, equipment, and animals;

(q) Annually FOTZ will assist the Parks Department with an assessment of the physical structures and equipment necessary to operate the Zoo.

Section 1.5 *Water consumption by the Zoo.* The Zoo agrees to pay the City for its water consumption to the extent that Parks and Recreation is required to pay the City for its water consumption. The Zoo will not be required to pay for its water consumption if Parks and Recreation is receiving any type of subsidy for Parks and Recreation's water consumption. The City will show the Zoo where the Zoo's water meters are located. The City will ensure that the current water meters only measure water that is consumed by the Zoo. The City will notify the Zoo if a water meter associated with the Zoo is relocated or a new water meter associated with the Zoo is added.

Section 1.6 *Compliance with the Americans with Disabilities Act ("ADA").* FOTZ took operational control of the Zoo on January 1, 2002. The City shall be responsible for any cost associated with bringing any sidewalk, structure, or building that was in existence prior to January 1, 2002 into compliance with the ADA. FOTZ shall be responsible for any cost associated with bringing any sidewalk, structure, or building that was built or constructed on or after January 1, 2002 into compliance with the ADA. The City is/has conducted an ADA audit of the Zoo. The City agrees to provide a copy of the audit/report to FOTZ. The City further agrees that the City will confer with FOTZ before creating a proposed schedule/timeline for upgrading or repairing any sidewalk, structure, or building to comply with the ADA if the Zoo will be required to bear any cost associated with the upgrade or repair.

Section 1.7 *Financial Information.* FOTZ shall keep separate accounts that clearly present the financial condition and financial results of operations of the Zoo and the operation and maintenance of the Zoo. FOTZ shall prepare interim financial statements with respect to the Zoo operations at least quarterly and shall furnish copies of such statements and any other interim financial statement information it prepares with respect to such operations in the ordinary course to the Parks Board promptly following their distribution to the FOTZ Board of Directors. FOTZ shall obtain an annual audited financial statement from an independent CPA firm detailing its revenues, expenditures, assets and liabilities and shall furnish a copy of each such statement to the Director of the Parks and Recreation Department and the City Auditor when it becomes available, but no later than 180 days following its fiscal year. FOTZ will comply with Kansas City Code of Ordinances Section 3-62. (Exhibit B FOTZ will present its capital and operating budgets to the Parks Board for its approval annually in the *final* month of FOTZ's fiscal year, which approval shall not be unreasonably withheld.

Section 1.8 *City Council, City Manager and Parks Board Representation.* FOTZ shall assure that during the time FOTZ manages and operates the Zoo pursuant to this Agreement, the President of the Parks Board, or a Commissioner of the Parks Board selected by the President (as a voting member), the Mayor of Kansas City, Missouri or a member of the City Council selected by the Mayor (as a voting member), the City Manager or a member of the City's staff selected by the City Manager (as a nonvoting member), and the Director (or Deputy Director, at the Director's discretion) of the Parks and Recreation Department (as a voting member), and an additional member of the City Council selected by the Mayor (as a nonvoting member) shall be permitted to serve as ex officio members of the FOTZ Board of Directors, entitled to attend all meetings of that Board and to receive the same information as other members of the Board. At

least one representative of the Parks and Recreation Department will serve on any committee or board which is responsible for selecting the person to serve as the Director of the Zoo.

ARTICLE II ZOO FACILITIES AND OPERATIONS

Section 2.1 *Zoo.* As used in this Agreement, “Zoo” shall mean all buildings and grounds, including fences, parking lots, walkways, ponds and landscaping, signage, other structures and their respective contents, utility connections, underground pipelines and facilities, all within the area delineated on the map attached to this Agreement as Exhibit A. Ownership of the real property (including fixtures) constituting the Zoo, whether now in existence or hereafter constructed, shall remain in the City.

Section 2.2 *Hours of Operation.* As the exclusive operator of the Zoo, subject to the terms of this Agreement, FOTZ shall have the right to control access to and the use of, the Zoo, including establishment of reasonable hours and days of operation for the Zoo to be open to the general public and for private functions which benefit the Zoo; provided, however, that the Parks Board may also hold functions organized and approved by the Parks Board as long as those functions do not conflict with previously contracted for and scheduled events by FOTZ and subject to approval by FOTZ which approval will not be unreasonably withheld. If the Parks Board holds such functions, it shall only pay for any cleanup costs or other costs associated with such functions.

Section 2.3 *Maintenance of Facilities.*

(a) FOTZ shall be responsible, at its expense, for maintaining the Zoo in a condition which permits its proper and efficient operation in accordance with the standards provided for in this Agreement, provided FOTZ shall not be required to make any Capital Improvements, except as specifically provided in this Agreement.

(b) In connection with the maintenance of the Zoo, FOTZ shall have the right at its expense to construct and thereafter to reconstruct, relocate, replace, modify or remove any and all structures, improvements and other items constituting the Zoo as may be deemed necessary or desirable by FOTZ; provided, however, that (i) any such action shall not adversely affect the operation of the Zoo in accordance with the standards provided for in this Agreement, (ii) FOTZ shall advise the Parks Board of the nature of the proposed action prior to taking it; (iii) if the cost of any such action is expected to be more than \$500,000.00 FOTZ shall obtain the Parks Board’s approval (which approval shall not be unreasonably withheld); and (iv) if a majority of the funds used for any such actions are obtained from the City (or from any taxing district which provides revenues from sales taxes collected in whole or in part from within the City), the action shall be performed in accordance with the procedures and requirements of the City (or alternatively, from any such taxing district, if the majority of the funds are provided from the sales taxes collected within the taxing district) for similar type work, including without limitation, the minority and women’s business enterprise participation goals; bidding and bonding requirements, and prevailing wage requirements.

(c) Notwithstanding the foregoing provisions of Section 2.3(b), in the event FOTZ utilizes private capital for the majority of the funds used for actions referred to therein, FOTZ may select general contractors without complying with City or Parks Board requirements, provided (i) such procedure for selection shall be approved by the Director of Parks and Recreation, (ii) FOTZ shall maintain or cause its general contractor or subcontractors to maintain, bonds and insurance in compliance with the City's requirements for such actions, and comply with applicable provisions of the Missouri prevailing wage laws and other laws applicable to the construction of public works by private entities for ultimate ownership by the City.

(d) Any physical improvements to the Zoo funded in whole or in part by the City or with other public funds shall comply with the applicable provisions of the Federal, State and City Code including Missouri Domestic Procurement (Buy American) Act - §§ 34.350 - 34.359, R.S.Mo. and the City's Buy American policy as currently stated in Section 2-1601 of the Code of Ordinances.

(e) In the event of damage to or destruction of all or any material portion of the Zoo by fire, smoke, explosion, flood, windstorm, earthquake or other accident or act of God, war or the public enemy, FOTZ may undertake, or cause to be undertaken, the emergency repair of such damage or destruction and the restoration of the affected Zoo, subject to the requirements of applicable bond financing and to the other provisions of this Section 2.3.

Section 2.4 *Personal Property and Liens.* FOTZ, as manager of the Zoo, shall have the right to use any personal property of the City located at the Zoo in its management of the Zoo, and may acquire, with Zoo revenue or otherwise, any additional personal property that it deems necessary, provided that no material change in the current Strategic Plan, shall be made prior to obtaining Parks Board approval, or unless pursuant to a policy adopted by the Parks Board.

Section 2.5 *Concessions.*

(a) FOTZ shall have complete control with respect to all concessions located within the Zoo, including without limitation, the selection, display, pricing and marketing of all merchandise sold therein, provided that (i) all beverages and food sold at such facilities shall be stored, handled and dispensed in compliance with applicable requirements of the Department of Health of the City and (ii) any alcoholic beverages sold shall be sold in compliance with generally applicable City requirements.

(b) All concessionaires and subcontractors of FOTZ operating at the Zoo shall be required to have (i) workers' compensation insurance (ii) product liability, general liability and property insurance of which the City shall be named as an additional insured and (iii) such other certificates or meet such other requirements as the City or Parks Board may reasonably request, in such amounts and with such provisions, including giving the Parks Board prior notice of cancellation, as the Parks Board may reasonably require from time to time while this Agreement is in force, it being understood that any

concession or subcontractor agreements in effect on the Effective Date shall be governed by the terms of agreements until their expiration or earlier termination.

Section 2.6 *Special Activities.* FOTZ shall have the right to authorize special activities conducted at the Zoo which are for the benefit of the Zoo, provided such activities do not prevent FOTZ from discharging its obligations under this Agreement. FOTZ may charge or permit such fees for special activities controlled by it as shall be approved by, or consistent with guidelines adopted by the FOTZ Executive Committee or its successor. To the extent such activities would extend beyond the Zoo to adjacent property controlled by the Parks Board (including any other entity having a contract with the Parks Board), FOTZ shall apply for any permits or permission required from the Parks Board for such activities in compliance with generally applicable regulations of the Parks Board (including required fees) and the Parks Board shall promptly grant such permits unless there is a substantial and reasonable basis for denial.

Section 2.7 *Parking.* The City owns the parking lots delineated on the map attached hereto as Exhibit A. FOTZ shall have access to the parking lots at no cost to the Zoo during the Zoo's normal business hours and as otherwise needed throughout the year. The City and FOTZ acknowledge that the parking lots will also need to be utilized by Starlight Theatre at various times throughout the year. The City and FOTZ therefore agree to work collaboratively to draft a separate written agreement between the City, FOTZ, and Starlight Theatre to govern usage, repair and maintenance of the parking lots. Until the parties execute the separate written agreement for the parking lots, the City shall be responsible for all maintenance and repair associated with the parking lots, except for routine maintenance of the area delineated in Exhibit A, such as mowing and routine trash collection. The separate written agreement between the City, FOTZ and Starlight Theatre will control the usage, repair and maintenance of the parking lots subject to this agreement once it's executed.

Section 2.8 *Signage.* FOTZ shall have the right to install and maintain any signage on Zoo grounds. FOTZ shall have the right, subject to the approval of the Parks Board, to install and maintain any signage on Parks property outside the Zoo grounds purchased by FOTZ, as shall be necessary in the reasonable judgment of FOTZ to the proper operation of the Zoo in accordance with the objectives of this Agreement. FOTZ and the Parks Department agree that additional signage is needed and will work together with Starlight Theatre and Sporting Kansas City to improve the signage within Swope Park and to establish an appropriate cost sharing plan.

Section 2.9 *Inspection.* The City and/or Parks Board shall have the right to inspect the Zoo to evaluate FOTZ's performance under this Agreement, and to discuss Zoo operations and maintenance with the FOTZ Executive Committee or the appropriate officers of FOTZ.

ARTICLE III PERSONNEL

Section 3.1 *Zoo Employees.* FOTZ shall hire and employ all such personnel who, in its judgment, are necessary to operate, manage, and maintain the Zoo in accordance with the provisions of this Agreement. FOTZ will have sole authority and responsibility to determine the personnel policies and practices of the Zoo, subject to the provisions of this Agreement.

Section 3.2 *Miscellaneous.*

(a) FOTZ will adopt reasonable personnel policies to protect its employees, including policies regarding sexual or racial harassment, violence in the workplace, drug and alcohol use, and policies which define just cause for disciplinary action and provide procedures to be followed in the enforcement of its policies.

(b) Notwithstanding the other provisions of Article III, FOTZ may terminate any employee if the functions performed by that position are terminated.

**ARTICLE IV
CITY AND PARKS BOARD SUPPORT**

Section 4.1 *Subsidy.*

(a) The Zoo is an important attraction for the City, and the City agrees that it will prioritize funding for the Zoo. Subject to annual appropriation, the City shall provide FOTZ with \$2 million in funding each Calendar Year to maintain the physical structures and equipment necessary to operate the Zoo (the “Subsidy”).

(b) The chief executive of the City, or other officer of the City, at any time charged with the responsibility of formulating budget proposals, shall include in the budget proposals submitted to the City Council, in each fiscal year in which this Agreement shall be in effect, an obligation and appropriation for the payment of the Subsidy required for the ensuing fiscal year, it being the intention of the City that the decision to budget and appropriate or not to budget and appropriate under this Agreement shall be made solely by the City Council and not by any other official of the City. The City intends to budget and appropriate the Subsidy, to pay the Subsidy each year during the term of this Agreement.

Section 4.2 *Other Assistance.* In connection with discharging their responsibilities under this Agreement, the City and Parks Board shall:

(a) facilitate all upgrades and utility improvements necessary for the enhanced delivery of electrical power, gas, and water to the Zoo in order to meet the needs of the Zoo including any growth and expansion of the Zoo.

(b) the City will maintain, repair or improve all roads, streets, curbs, lights and signage located in Swope Park or related to, but not located within the Zoo;

(c) the City will maintain all the landscaping, trees and other plants, and gardens in Swope Park other than in the Zoo, including limitations, seeding, planting, fertilizing, mulching, mowing, trimming and cleaning up and removing trees, limbs, leaves and debris;

(d) the City will include FOTZ in, and keep FOTZ advised about, discussions and plans concerning the establishment of priorities and applications for Swope Park related funding projects, including without limitation, those involved in Swope Park Master Planning.

(e) the City will be responsible for the repair and replacement of any water mains and below ground water lines utilized by the Zoo.

Section 4.3 *City Bond Capability.* Neither party shall take any action that would prevent bonds from being issued for capital improvements at the Zoo, or which would imperil the tax exempt status of the existing bonds issued for Zoo improvements, including the private use limitations and management agreement restrictions.

Section 4.4 *Completion of Zoo Capital Projects.* The City and FOTZ agree that the Zoo is not finished and that they will cooperate to complete exhibits in the Master Plan or subsequent amendments and the Strategic Plan and will endeavor to develop a basis for more permanent financial support through a capital improvements campaign, sales tax or bond issue or otherwise.

ARTICLE V COMPUTER, NETWORK, TELEPHONE, AND RADIO SYSTEMS

Section 5.1 *Ownership and Responsibilities of Computers, Equipment and Infrastructure.*

(a) FOTZ will be responsible for cost and maintenance of all computers, network equipment, telephone systems and software used in its operations. FOTZ and City recognize that their systems are interdependent and neither will take any action to interfere with the other's system. FOTZ may elect to install and maintain any systems necessary for its operation, including, but not limited to computers, networking, fiber optics, radios, telephones and WIFI systems. Any system installation FOTZ elects to make will be primarily independent of and not use any City owned, installed or maintained infrastructure to include but not be limited to phones, wiring, cabling, network, voice system equipment or dial plan. This includes the future use of any City exchanges such as 513-xxxx. The city will provide forwarding services of a main Zoo 513-xxxx number to a Zoo lead number. The use of existing cabling systems must be approved by the KCMO IT department.

(b) City will retain ownership of equipment and cabling infrastructure located on Zoo grounds and in Zoo buildings. This infrastructure will remain accessible to Information Technology staff of the Parks and Recreation Department and the City's Information Technology Department at all times. Each of the three entities (FOTZ, KCMO ITD, and KCMO Parks and Recreation) shall have a primary and backup employee holding keys to all equipment rooms. Due to the availability of access by multiple parties, any damage to placed equipment and/or infrastructure or interruption of established services of any party caused by one of the parties will be the responsibility of the causing party to rectify or indemnify the other parties. FOTZ will be responsible for

the cost of adding cabling capacity in the event cabling capacity is exhausted. In the event of contract expiration or termination, FOTZ will be responsible for any cost required to restore all communication rooms and infrastructure to pre-contract state.

(c) All equipment rooms, circuitry and cabling remain the property of the City. Any changes, additions or deletions to any equipment, servicing multiple parties, by any of the three parties will be discussed prior to the change with all other parties. Any changes, additions or deletions of equipment that exclusively service one and only one of the parties may be made by the owning party, without the need to discuss the action with the other parties beforehand. The Parks and Recreation Department will be responsible for any electrical service requirements to service Information Technology services provided by the City's Information Technology Department. The FOTZ network will not be connected to the City's network.

(d) *New Construction As-Built.* Construction and or changes to all network infrastructure are to be documented to show the exact location and elements of the work completed. All As-Built diagrams/information are to be in an electronic format, preferably in PDF, and are to be submitted to the Parks & Recreation Department for archival retention.

Section 5.2 *Current Network Infrastructure.* All current network infrastructure is to be documented to show the exact location and elements of the work completed. All As-Built diagrams/information are to be in an electronic format, preferably in PDF, and shall be submitted to the Parks & Recreation Department for archival retention.

ARTICLE VI COOPERATION

Section 6.1 *Cooperation.* The parties recognize the importance of coordination of any activities within or around the Zoo, including in particular, in Swope Park, and of the joint promotion and marketing of their respective programs. Consequently, each party shall use its reasonable best efforts to keep the other informed as far in advance as possible of any major event that would impact the operations of the other in such area (including without limitation, matters affecting the Zoo accreditation or licensure) and insofar as their resources permit the parties shall collaborate and cooperate at the instance of either on joint programs or the marketing of each other's programs.

Section 6.2 *Performance in Event of Default.* In the event that FOTZ shall fail after reasonable notice to perform any of its responsibilities under this Agreement, the City shall have the right (but not the obligation) to perform such actions. If the City chooses to do so, it shall have the right to receive reimbursement from FOTZ for the costs incurred in such performance promptly upon presentation of appropriate documentation therefore or to offset such costs against any future payments to FOTZ due from the City under this Agreement. In the event that the City shall fail after reasonable notice to perform any of its responsibilities under this Agreement, FOTZ shall have the right (but not the obligation) to perform such actions and to receive reimbursement from the City of the costs incurred in such performance promptly upon

presentation of appropriate documentation therefore or to offset such costs against any future payments to the City due from FOTZ under this Agreement.

Section 6.3 *Style Policy.* FOTZ agrees to comply with the Parks and Recreation Style Policy which is attached hereto as Exhibit B and made part of this Agreement. FOTZ shall visually identify in printed promotional materials and marketing displays the role Parks and Recreation plays in the public services provided under the terms of this Agreement.

ARTICLE VII INSURANCE

Section 7.1 *Property Damage.* FOTZ shall obtain and maintain in effect, at FOTZ's cost, insurance coverage in amounts and on terms with respect to fire, smoke, explosion, flood, wind storm, earthquake or other accident or act of God affecting the Zoo not less than the coverage identified in Exhibit C hereto, naming the City, its officials, officers and employees, as an additional insured and including any special endorsements reasonably required by the City, and shall increase such coverage as reasonably requested by the City to reflect significant additional risks incurred at the Zoo after the Effective Date.

Section 7.2 *General Liability.* FOTZ shall obtain and maintain in effect, at FOTZ's cost, insurance coverage with regard to general liability, automobile liability and other liabilities arising out of the operation of the Zoo after the Effective Date, of not less than the coverage identified on Exhibit C, naming City, its officials, officers and employees, as an additional insured, and including any special endorsements reasonably required by the City, and shall increase such coverage as reasonably requested by the City to reflect significant additional risks incurred at the Zoo after the Effective Date.

Section 7.3 *Workers' Compensation and Employer's Liability Insurance.* FOTZ shall maintain workers' compensation as required by law and employer's liability insurance as required by law and shall also require its subcontractors to do the same.

Section 7.4 *Miscellaneous Insurance Provisions.* Unless otherwise provided, all insurance policies obtained pursuant to this Agreement shall: (i) provide that the policy may not be suspended, voided, cancelled, non-renewed, or reduced in coverage or in limits without prior written notice to FOTZ and the City; and (ii) be issued by a company or companies authorized to do business in the State of Missouri, approved by the City and with a Best's rating of claims paying ability of no less than -B+V or its equivalent. By December 31 of each year, FOTZ and the City shall provide each other with original insurance certificates evidencing the coverages required by this Agreement.

Section 7.5 *Waiver of Subrogation.* FOTZ and the City hereby waive any right of subrogation and release one another from any claims for damage to any person or to the real property that constitutes the Zoo and to the fixtures, personal property and other improvements and alterations to the Zoo, that are caused by or result from risks insured against under any insurance policies carried by the parties hereto and in force at the time of such damage, even if such loss or damage shall have been caused by the fault or negligence of the other party;

provided however, that the releases herein contained shall not apply to any loss or damage caused by the willful, wanton or grossly negligent acts or omissions of the party released herein.

Section 7.6 *Indemnification.* FOTZ shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers, or employees (“Indemnified Parties”) from and against all claims, damages, liability, losses costs, and expenses, including reasonable attorneys’ fees, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by FOTZ, its employees, agents, or subcontractors, or caused by others for whom FOTZ is liable. FOTZ shall not be required to defend, indemnify, or hold harmless any Indemnified Party if the claim, damage, liability, loss, cost, or expense that triggers FOTZ obligations hereunder are based in whole or in part on any act or omission, including negligence, of City, its agencies, officials, officers, or employees, including, but not limited to, the Parks Board. FOTZ’s obligations under this section shall be limited to the coverage and limits of insurance that FOTZ is required to procure and maintain under this Agreement. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City’s rights or defenses with regard to sovereign immunity, governmental immunity or other official immunities and protections as provided by the federal and state constitutions.

Section 7.7 *Tort or Sovereign Immunity.* Nothing set forth in this Agreement is intended to waive any immunity either party may have under applicable law.

ARTICLE VIII TERM AND TERMINATION

Section 8.1 *Term.* This Agreement shall commence on the date executed by the parties and shall continue thereafter until December 31, 2026, and shall be automatically extended for successive five (5) year periods thereafter, as permitted by the Charter of the City, unless terminated earlier as provided in this Agreement, or unless either the City or FOTZ gives the other 180 days’ written notice prior to the termination date that the Agreement will not be extended. Near the end of each five year period FOTZ and the City will negotiate in good faith any necessary change in terms to reflect the then current conditions. In no event shall FOTZ enter into any agreement or undertaking, including any lease, in connection with the Zoo that extends beyond the expiration date of this Agreement, without Parks Board approval.

Section 8.2 *Termination.* This Agreement may be terminated by FOTZ upon thirty (30) days’ notice in the event of any default continued for ten (10) business days after notice from FOTZ to the Parks Board, in the payment of any installment of the Subsidy or in the event the City or the Parks Board levies to FOTZ without FOTZ’s consent any charge or fee not presently charged to the Zoo for services, products or utilities. Except as otherwise provided in the preceding sentence, this Agreement may be terminated by either party (i) in the event of a *material* default by the other party in the performance of any of its obligations, provisions, or material representations made by it in this Agreement, provided written notice of such default or breach has been given to the defaulting or breaching party and such party has not corrected such default or breach within thirty (30) days of the receipt of such notice, or (ii) immediately in the event that it believes the other party is faced with imminent bankruptcy, receivership or insolvency or other circumstances which would prevent effective performance under this Agreement and demands written certification and substantiation from the other party that such

other party's bankruptcy, receivership, insolvency or circumstance which would prevent effective performance of this Agreement are not imminent but does not receive such written certification and substantiation within five (5) days of its demand.

Section 8.3 *Actions on Termination.*

(a) Upon the expiration of this Agreement or its termination after the Effective Date, regardless of the reason therefore and regardless of which party effected the termination, (i) except in the case of termination for reasons specified in the first sentence of Section 8.2 or clause (ii) of the second sentence of Section 8.2, the parties shall nonetheless continue to perform their obligations under this Agreement for six (6) months (or such shorter period as the non-defaulting party agrees is necessary to complete the transition of control and responsibility), (ii) all of the Zoo then operated by FOTZ and all of FOTZ's rights and obligations for performance relating to future periods under all contracts relating to the Zoo shall be assigned, transferred, sold and conveyed to, and assumed by, the City, if the City desires that these contracts be conveyed to the City, without any consideration therefore except the promises of the City in this Agreement, and (iii) the parties shall cooperate with one another in the orderly transfer of control over the Zoo. In such event, the City shall offer employment to all of FOTZ's employees then engaged in the operation and maintenance of the Zoo on the same terms and conditions as other City employees of comparable qualifications and seniority and FOTZ shall assist in the transfer of such employees.

(b) In the event of an early termination of this Agreement or upon its expiration, it is the parties' intent that the animals in the collection receive as humane a treatment as is possible under whatever circumstances then exist and that the economic value of the Zoo's collection and its utility and value as a public resource be preserved as well as is reasonably possible under a transfer of operational control. FOTZ will transfer ownership of any animals and other personal property then owned by FOTZ used in the operation, maintenance, and management of the Zoo.

(c) The parties' agreements in this section and their activities pursuant hereto shall be entirely without prejudice to any claim either may have against the other arising out of the early termination of this Agreement or existing at the time of its expiration or earlier termination, all of which claims shall remain unaffected by the parties' actions on termination pursuant to this section.

(d) Notwithstanding the foregoing, FOTZ shall not be required by this Agreement to transfer to the City or any other party, (i) assets owned or held by FOTZ at the Effective Date which were not acquired pursuant to this Agreement, (ii) assets acquired after the Effective Date by FOTZ, without using public funds, for use in its activities other than those required under this Agreement, (iii) trust funds, endowments or other gifts received by FOTZ, other than pursuant to this Agreement, prior to the Effective Date or thereafter, or (iv) any sums then remaining in the Founder's Fund (which shall be distributed in accordance with the Fund's Proposed Uses and Approval Process) or (v) FOTZ's membership roster, or its other files or records not pertaining to the Zoo. After termination of this Agreement, the parties will cooperate to cause the

Founder's Fund and other funds resulting from operation of the Zoo to be spent to benefit the Zoo consistent with and subject to the Proposed Uses and Approval Process or the donors' intentions and instructions. In the event that the Founder's Fund cannot be spent to benefit the Zoo in a manner that is consistent with the Proposed Uses and Approval Process, the parties will attempt to contact such donors and provide them with the option of either refunding the donation or redirecting how the funds will be spent to benefit the Zoo.

ARTICLE IX FORCE MAJEURE

Section 9.1 Force Majeure Event means acts of omissions of any governmental authority (other than the City or its agents), pandemics, epidemics, health emergencies, fires, storms, natural disasters, strikes, riots, power failures and any other event or occurrence, irrespective of whether similar to the foregoing, that is beyond the control of the party claiming that the Force Majeure Event affects its ability to perform any of its obligations under this Agreement. Neither party shall be liable for any delay in performance of any obligation under this Agreement (other than the payment of money) or any inability to perform an obligation under this Agreement (other than the payment of money) if and to the extent that such delay in performance or inability to perform is caused by a Force Majeure Event, so long as the party claiming the Force Majeure Event is working diligently to terminate the Force Majeure Event. A party claiming a Force Majeure Event as an excuse for delay or nonperformance under this Agreement shall provide the other party with prompt notice of the initiation of the Force Majeure Event, when it is expected to terminate, and of the termination of such event. A Force Majeure Event shall be deemed to be terminated with respect to a particular delay or nonperformance when its effects on such future performance have been substantially eliminated. If it is estimated that the Force Majeure Event will not terminate, or it does not in fact terminate, until 180 days after it occurs, then at any time while the Force Majeure Event continues the party not claiming Force Majeure Event may terminate this Agreement by notice to the party claiming the Force Majeure Event. Notwithstanding the foregoing provisions, settlement of a strike or lockout shall be deemed beyond the control of the party claiming excuse thereby regardless of the cause of, or the ability of such party to settle, such strike or lockout.

ARTICLE X REPRESENTATIONS AND WARRANTIES

Section 10.1 *Authority.* Each party represents and warrants to the other party that the execution and delivery of this Agreement by it has been duly authorized by all proper actions and proceedings to enter into and perform this Agreement and that this Agreement constitutes the legal, valid, binding and enforceable obligation of such party, subject to applicable bankruptcy, insolvency or other laws affecting creditors rights generally.

Section 10.2 *Contracts.* Upon termination of this Agreement, FOTZ will, with respect to the contracts, agreements and undertakings to which FOTZ is then obligated (i) furnish true and complete copies, including any amendments or modifications, to the City and (ii) warrant in writing that as of the termination of this Agreement, FOTZ has performed all of its obligations under those contracts, agreements and undertakings, and is not in default, and has paid all

amounts due for goods or services delivered or performed prior to the termination of this Agreement.

Section 10.3 *Liabilities.* The City represents and warrants that there exist no liabilities with respect to the Zoo, and no condition, situation or circumstances that, to City's knowledge could reasonably result in a liability with respect to the Zoo that: (i) will be assumed by FOTZ as a result of entering into this Agreement, (except as disclosed specifically herein or in the exhibits hereto) and (ii) would adversely affect in a material way the properties or operations of the Zoo (excluding general economic conditions).

ARTICLE XI MISCELLANEOUS

Section 11.1 *Prior Contracts.* This Agreement supersedes all prior contracts and reimbursement arrangements between FOTZ and the City.

Section 11.2 *No Contingent Fees/Brokerage.* FOTZ has not employed or retained any company or person who is not a bona fide employee or established agent of FOTZ to solicit or secure this Agreement and has not paid or agreed to pay any company or person, other than any consideration contingent upon or resulting from the award or making of this Agreement other than by FOTZ. FOTZ agrees that for any breach of this covenant the City shall have the right to annul this Agreement or in its discretion to recover the full amount of any such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 11.3 *No Subcontractor Kickback.* FOTZ has not made or solicited any payment, gratuity or benefit from any subcontractor to FOTZ, or any person associated with such a subcontractor, for the award of a subcontract to this Agreement.

Section 11.4 *No Gratuities.* FOTZ will not offer, give or agree to give any employee or former employee of the City anything of pecuniary value for or because of (i) any official action taken, or to be taken, or which could be taken, or (ii) a legal duty performed, or to be performed or which can be performed, or (iii) a legal duty violated, or to be violated, or which could be violated, by such employee or former employee.

Section 11.5 *Officials Not to Benefit.* No regular employee or elected or appointed member of the City Government shall be admitted to any share or part of the Agreement or to any pecuniary benefit that may accrue therefrom.

Section 11.6 *Notices.* All notices hereunder shall be in writing and shall be given as follows:

If to the City or Parks Board, to:
Director, Parks and Recreation Department
Terry R. Dopson Administrative Building
4600 E. 63rd Street
Kansas City, MO 64130
Fax: 816-513-7535

With a copy to:
Office of the City Manager
City Hall, 29th Floor
414 East 12th Street
Kansas City, MO 64106
Fax: 816-513-1363

Office of the City Attorney
City Hall, 28th Floor
414 East 12th Street
Kansas City, MO 64106
Fax: 816-513-3133

If to FOTZ, to:
Chairperson of FOTZ
6800 Zoo Drive
Kansas City, MO 64132
Fax: 816-513-5850

With a copy to:
Director of the Zoo
6800 Zoo Drive
Kansas City, MO 64132
Fax: 816-513-5850

All notices shall be effective upon receipt. Notices given by fax or email shall be confirmed by mailing a copy thereof, first class postage prepaid. Either party may change the address or addresses for notices to be sent to it by giving notice to the other party.

Section 11.7 *Assignment.* Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, nor may FOTZ engage in any merger or consolidation with another organization without the prior written consent of the Parks Board. The foregoing shall not prohibit FOTZ from contracting with third parties to provide services to support the maintenance obligations that FOTZ has undertaken under this Agreement.

Section 11.8 *Interpretation.* Article and Section titles and headings are provided for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. References in this Agreement to Articles, Sections or Exhibits are to Articles, Sections or Exhibits of this Agreement. Both parties have reviewed and discussed this Agreement with counsel, and this Agreement shall be interpreted without applying any rule providing for construction against the drafting party.

Section 11.9 *Entire Agreement; Beneficiaries; Amendments.* This Agreement constitutes the entire agreement of the parties, and supersedes all prior agreements or understandings, both written and oral, between the parties with regard to the subject matter

hereof. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each party. Except for amendments to the provisions of Article IV Section 4.1 of this Agreement pertaining to the City and Parks Board support to the Zoo, which must be approved by the City Council, the Parks Board is hereby authorized to approve amendments to this Agreement without the approval of the City Council.

Section 11.10 *Waivers*. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to either party, it is authorized in writing by an authorized representative of such party. The failure of a party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 11.11 *Expenses*. Each party hereto shall pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel, accountants and other consultants.

Section 11.12 *Partial Invalidity*. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein is held to be invalid, illegal or unenforceable in any respect for any reason, such provision will be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 11.13 *Covenant to Maintain Status*. FOTZ covenants to maintain its status as a Missouri nonprofit corporation in good standing and its tax-exempt status under 26 U.S.C. section 501(c) (3).

Section 11.14 *Obligation to Fund*. All obligations of the City hereunder shall be subject to appropriation of the required funds and the collection of the levies therefore.

Section 11.15 *Execution in Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same Agreement, and shall become binding when one or more counterparts have been signed by each party.

Section 11.16 *Governing Law*. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Missouri.

Section 11.17 *Compliance with Laws.* FOTZ shall comply with all applicable federal, state, and local laws, ordinances and regulations, including but not limited to, the Missouri Open Records Law, Chapter 610, R.S.Mo. FOTZ, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement if applicable.

Section 11.18 *Audit.* The City may conduct during normal business hours reasonable audits of the financial books and records of FOTZ relating to FOTZ's management and operation of the Zoo for the purpose of confirming FOTZ's compliance with the terms of this Agreement. FOTZ shall keep such books and records available during the term of this Agreement and for three years thereafter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

CITY OF KANSAS CITY, MISSOURI

By: _____

Name: _____

Title: _____

BOARD OF PARKS AND RECREATION
COMMISSIONERS OF KANSAS CITY,
MISSOURI

By: _____

Name: _____

Title: _____

Approved as to form:

Assistant City Attorney

FRIENDS OF THE ZOO, INC. OF
KANSAS CITY, MISSOURI

By: _____

Name: _____

Title: _____

